

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own)
motion, to investigate jurisdictional issues)
pertaining to construction and operation of a)
natural gas pipeline within the state of)
Nebraska by Nebraska Resources Company,)
LLC, or any other entity.)

Docket No. NG-0051/PI-130

COMMENTS OF THE PUBLIC ADVOCATE

The Public Advocate submits the following comments in response to the Commission's July 24, 2007 Order Opening Investigation and Notice of Hearing (the "July 24, 2007 Order"):

I. Background

On July 16, 2007, Nebraska Resources Company, LLC ("NRC"), filed a request by letter that the Commission open an investigation on its own motion to look into three specified issues listed in such letter. On July 24, 2007, the Commission entered its Order Opening Investigation and Notice of Hearing. Among other things, such Order requested comments by September, 7, 2007, on four specific questions, including the three questions proposed in NRC's letter, and a fourth question. The four questions posed by the Commission in its July 24, 2007 Order are as follows:

1. Does the definition of "high-volume" ratepayer" in Neb. Rev. Stat. Sec. 66-1802(7) include LDCs with volumetric demand in excess of 500 therms per day?
2. Does Nebraska's double-piping prohibition under Neb. Rev. Stat. Sec. 66-1852 apply to a pipeline providing a new interconnection to an LDC?
3. Does the Commission have jurisdiction over an Application under Neb. Rev. Stat. Sec. 66-1853(1) for a Certificate of Public Convenience to operate as a "jurisdictional

utility” a pipeline located wholly within the state of Nebraska to deliver natural gas to LDCs and other customers?

4. What other regulatory authorities, including state, federal and local governing bodies of any kind, would have jurisdiction over the proposed NRC pipeline, and what is the scope of their review?

II. Comments of the Public Advocate

A. Preliminary Matters

It is the understanding of the Public Advocate that NRC intends to file extensive comments that will provide a greater measure of input on the questions upon which the Commission has sought comments than NRC’s letter. Other interested parties may also be submitting comments. Thus, there may be more facts and more insights available to the Commission after comments are received than those matters set forth in NRC’s letter. With that qualification, the Public Advocate submits comments as follows.

The Commission will want to determine whether it can and should provide any definitive rulings in the context of this investigatory docket on the questions presented in the July 24, 2007 Order and/or with specific regard to the proposed NRC pipeline or whether any other proceedings are necessary or appropriate in order to make such a rulings.

Although economic development may be good for natural gas ratepayers and/or for the citizenry of the State in general and although the Public Advocate is certainly interested in the welfare of ratepayers and citizens, it is beyond the scope of the Public Advocate’s expertise and predictive capability to provide specific comments as to whether the proposed NRC pipeline would bring tangible benefits to natural gas ratepayers and/or would result in

additional high-volume ratepayer load in Nebraska. That having been said, to the extent that the NRC pipeline would provide an additional source of gas supply that could ultimately flow to jurisdictional ratepayers, it makes sense that such an alternate source of supply may provide local distribution companies ("LDCs") with the ability to obtain lower cost gas supplies that would ultimately benefit the ratepayers consuming natural gas.

From conferring with representatives of NRC, the Public Advocate certainly has the impression that a great deal of thought, study and expertise has been brought to bear by NRC in exploring the possibility of proceeding with the NRC pipeline. Although such discussion was not intended to be and certainly did not rise to the level of a due diligence review of the experience and capability of NRC and its personnel, the Public Advocate came away from such discussion with the impression that NRC and its representatives have done their homework and are committed to proceeding with the NRC pipeline project, assuming that necessary regulatory approvals can be obtained, whether from this Commission and/or the FERC, in a time frame that will coincide with construction, engineering and customer considerations

While the factors noted in the preceding two paragraphs certainly seem positive, the resolution by this Commission of the questions posed in the Commission's July 24, 2007 Order must necessarily consider applicable law, even if it were to be assumed that the NRC pipeline would be a good thing for Nebraska and/or Nebraska jurisdictional ratepayers and that NRC is fully qualified to construct and manage the NRC pipeline, if it is ultimately built. NRC has indicated that federal preemption may apply to this matter in at least some respects. Under one scenario, at least in NRC's view, such federal preemption would only cover some

aspects of the regulation of the NRC pipeline (e.g., service to high-volume ratepayers whose rates are not subject to the jurisdiction of this Commission). In other scenarios, federal preemption might render moot or override determinations this Commission may make with respect to state law issues in this docket. While federal preemption principles could conceivably have an impact on the issues presented and there may be further sub-issues as to whether any federal preemption effect would be full or partial, the Commission can only apply the operative state law – such as the State Natural Gas Regulation Act and any applicable double-piping statutes -- and the scope of authority to be exercised by the Commission must necessarily depend upon the scope and operation of such applicable state law. To the extent that it may be suggested that this Commission can and should undertake regulatory oversight over matters which it has not heretofore focused on with respect to natural gas matters, such as environmental issues related to the proposed NRC pipeline, the Commission should consider whether it is or can be equipped to undertake such additional responsibility, whether through engaging consultants or otherwise. By making these observations, the Public Advocate does not mean to be understood to be taking a position that is either opposed to or in favor of the NRC pipeline project, nor does the Public Advocate presuppose that regulation of the NRC pipeline, if built, would necessarily be a function of this Commission, the FERC or both.

The Public Advocate also does not mean to be understood as suggesting that the comments that follow are necessarily its “last word” opinions on the questions posed, as the ultimate answers to the questions posed may be impacted as the Commission determines in what procedural context this matter is most appropriately considered, as comments of

interested parties are submitted and considered and as additional facts are placed before the Commission.

With the foregoing qualifications, the Public Advocate submits the following comments on the four questions specified in the Commission's July 24, 2007 Order.

B. Preliminary Responses to Questions Posed in the Commission's Order

For convenience, the four questions set forth in the Commission's July 24, 2007 Order are set forth below, immediately prior to the Public Advocate's comments with respect to each such question.

- 1. Does the definition of "high-volume" ratepayer" in Neb. Rev. Stat. Sec. 66-1802(7) include LDCs with volumetric demand in excess of 500 therms per day?**

Comment: The Public Advocate is of the preliminary opinion that the definition of "high-volume ratepayer" set forth in §66-1802(7) was intended to apply to end-users of natural gas. Even though §66-1802(7) speaks in terms of "a ratepayer whose natural gas requirements equal or exceed five hundred therms per day," the subsequent reference to such "requirements" being "determined by average daily consumption" is consistent with an intention that only ratepayers who actually consume gas can qualify as high-volume ratepayers (as opposed to the possible scenario of an LDC receiving natural gas requirements of five hundred therms or more that it ultimately resells to jurisdictional ratepayers for their ultimate consumption). However, in addressing this issue, the

Commission should be mindful that LDCs also constitute ultimate consumers of natural gas in some circumstances. By way of example, an LDC may consume some of the gas to be transported in a pipeline for the purpose of fueling compressors or other equipment. In addition, an LDC may also use gas as fuel for space heating in offices and other facilities it may have in its service territory. It is possible that these two examples of possible end-uses of natural gas by LDCs may deserve differing treatment. However, in considering where LDCs may fall with respect to the “natural gas requirements equal or exceed five hundred therms per day” level contained in the statutory definition of “high-volume ratepayers,” it would seem that the Commission should consider the level of actual consumption of natural gas by the LDC, even if it is assumed that gas not actually consumed by the LDC, but only conveyed to customers of the LDC who are ultimate end-users would not be considered.

2. Does Nebraska’s double-piping prohibition under Neb. Rev. Stat. Sec. 66-1852 apply to a pipeline providing a new interconnection to an LDC?

Comment: It may be difficult to fully address this question without knowing the exact facts presented. However, as a general matter, if a pipeline that is entirely contained solely within the State of Nebraska is serving only LDCs and high-volume ratepayers, it initially seems that there would be few, if any, likely potential conflicts. That being said, to the extent that

any facilities comprising the pipeline infrastructure and/or services to be provided by the pipeline could be deemed to be “natural gas mains or other natural gas services” within the meaning of Neb. Rev. Stat. §66-1852(1), a question could be presented as to whether such facilities and/or services are “duplicative or redundant” within the meaning of such statute.

3. **Does the Commission have jurisdiction over an Application under Neb. Rev. Stat. Sec. 66-1853(1) for a Certificate of Public Convenience to operate as a “jurisdictional utility” a pipeline located wholly within the state of Nebraska to deliver natural gas to LDCs and other customers?**

Comment: So long as the NRC pipeline is not an “interstate pipeline,” it would appear that NRC would probably qualify as a “natural gas public utility” within the meaning of Neb. Rev. Stat. §66-1802(11). As the Public Advocate understands the proposed NRC pipeline, NRC would constitute a company that would own, control, operate and/or manage equipment, plant or machinery “for the conveyance of natural gas through pipelines in or through any part of this state.” If this is correct, then NRC would need to first obtain a certificate of public convenience pursuant to Neb. Rev. Stat. §66-1853 before it could transact business in Nebraska and before it could function as “jurisdictional utility.” Until and unless NRC would be certificated so that it could act as a “jurisdictional utility,” it would not appear to qualify for the exception provided in Neb. Rev. Stat. §66-1856 that existing jurisdictional utilities

shall not be required to obtain prior approval from the Commission to begin the construction of new plant, equipment, property or facilities.

4. **What other regulatory authorities, including state, federal and local governing bodies of any kind, would have jurisdiction over the proposed NRC pipeline, and what is the scope of their review?**

Comment: The Public Advocate believes that NRC representatives have a much more specific understanding of the various other regulatory authorities which might have jurisdiction over various aspects of the proposed NRC pipeline and the specific scope of each such authority's review. Without meaning to be understood as necessarily setting forth an exhaustive list, it is the Public Advocate's understanding that various authorities who may have some jurisdiction and/or other involvement may include the FERC, the U.S. Corps of Engineers, the federal Fish and Wildlife Service, the Environmental Protection Agency, this Commission, the Nebraska Department of Environmental Quality, the Nebraska Department of Roads, the Nebraska State Fire Marshall, the State Historical Preservation Office, authorities regarding native American matters, the Natural Resource Conservation Service, the Nebraska Game and Parks Commission, and various counties through which the pipeline would pass. (If the NRC pipeline would pass through any municipalities, municipal governmental authorities may also be involved.) Depending upon comments to be provided by NRC

and other interested parties, the Public Advocate may have further comments to present at the public hearing in this docket.

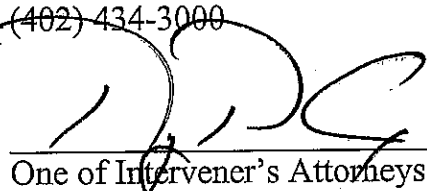
CONCLUSION

The Public Advocate appreciates the opportunity to provide comments in this matter and reserves the ability to submit further comments as additional information becomes available and/or at the public hearing scheduled in this proceeding.

DATED this 7th day of September, 2007

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by U.S. Mail, sufficient postage prepaid on the 7th day of September, 2007, upon the following individuals:

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